

APPEAL NO. 162622  
FILED FEBRUARY 27, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2016, with the record closing on November 17, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. We note the hearing officer mistakenly stated the record closed on November 7, 2016, but the Texas Department of Insurance, Division of Workers' Compensation (Division) records reflect the record closed on November 17, 2016. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury extends to a concussion; (2) the (date of injury), compensable injury does not extend to disc bulges at C3-4, C4-5 with spondylosis, disc protrusion at C6-7, and lumbar radiculopathy; (3) the respondent (claimant) reached maximum medical improvement (MMI) on November 22, 2015; and (4) the claimant's impairment rating (IR) is 9%. The appellant (self-insured) appeals the hearing officer's determination of the IR, contending that the hearing officer made a clerical error because the certification she adopted was for a 10% IR rather than a 9% IR. The appeal file does not contain a response from the claimant.

The hearing officer's determinations that the compensable injury of (date of injury), extends to a concussion but does not extend to disc bulges at C3-4, C4-5 with spondylosis, disc protrusion at C6-7, and lumbar radiculopathy and that the claimant reached MMI on November 22, 2015, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), at least in the form of a cervical strain, lumbar strain, and a head contusion. The claimant testified that he was injured when he slipped while working.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The record indicates that (Dr. B) was appointed by the Division as the designated doctor. Dr. B examined the claimant on May 18, 2016, and certified that the claimant reached MMI on November 22, 2015, with a 10% IR. The hearing officer mistakenly found that the designated doctor assessed an IR of 9%, rather than the 10% IR he actually assessed, as reflected on the Report of Medical Evaluation (DWC-69) and the designated doctor's narrative report in evidence. The hearing officer in her discussion of the evidence correctly noted that Dr. B certified that the claimant reached MMI on November 22, 2015, and assigned a 10% IR and further stated that the certification of Dr. B is not contrary to the preponderance of other medical evidence and is adopted. Consequently, the hearing officer's determination that the claimant's IR is 9% is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant's IR is 9% and render a new decision that the claimant's IR is 10%.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
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For service by mail the address is:

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P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge